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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-6032

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

APPELLANTS

VS.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated.

APPELLEE

On Appeal from the United States Three Judge District Court for the District of Connecticut

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JURISDICTIONAL STATEMENT

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Dated: January 3, 1974

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APPELLEE

On Appeal from the United States Three Judge District Court for the District of Connecticut

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States Three Judge District Court for the District of Connecticut entered September 7, 1973 denying their application for a permanent injunction and dismissing the case, and submit this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW.

The opinions of the United States Three Judge District Court are not yet reported. The opinion for the District Court for the District of Connecticut denying preliminary relief in a companion case, Doe et als. v. Norton, is reported at 356 F. Supp. 202. Copies of the Judgment and of the Memorandum of Decision, Findings of Fact and Conclusions of Law of the District Court are attached hereto as Appendix A.

JURISDICTION.

Appellants brought this action under the Civil Rights Act, 42 U. S. C. §1983, jurisdiction being conferred on the District Court by 28 U. S. C. §1343(3). In it they sought declaratory and injunctive relief under 28 U. S. C. §2201 et seq.

The constitutionality of a state statute being in question, this action was consolidated with Doe et als. v. Norton (Civil Action No. 15,579, U. S. D. C., D. Conn.) in which a three judge court had previously been convened under 28 U. S. C. §2281 and 2284.

The court below filed its Memorandum of Decision, Findings of Fact and Conclusions of Law on September 5, 1973; Judgment thereon was entered September 7, 1973.

Appellants filed their notice of appeal November 5, 1973. Jurisdiction over this appeal is predicated on 28 U. S. C. §1253, see e.g. Carter v. Stanton 405 U.S. 669 (1972).

THE STATUTE INVOLVED.

Connecticut General Statutes §52-440b provides:

> "(a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.
>
> "(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both. "

Other statutes involved in the construction of C.G.S. §52-440b but which are not challenged in this action include:

1. C.G.S. §52-435a (as amended).

> "Proceedings to establish paternity of a child born or conceived out of lawful wedlock, including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother or expectant mother, with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides....No such petition shall be brought after three years from the birth of such child, or after three years from the cessation of contribution toward support of the child by the putative father, whichever is later...."

2. C.G.S. §52-435b.

> " The mother of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity. "

3. C.G.S. §52-440a.

> " The state or any town interested in the support of a child born our of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the welfare commissioner or the town welfare administrator on information and belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition."

4. C.G.S. §52-442a.

> "(a) In lieu of or in conclusion of proceedings under §52-435a, the written acknowledgment of paternity executed by the putative father of the child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the child and filed with the circuit court for the circuit in which the mother of the child or the putative father resides shall have the same force and effect as a judgment of that court;..."

QUESTIONS PRESENTED

1. Did the Three Judge District Court err in determining that mothers of children born out of wedlock have no constitutional right to refuse to bring an action to establish the paternity of their children and/or to refuse to seek monetary support from the fathers of said children ?

2. Did the Three Judge District Court err in deciding that the same mothers have no constitutional privilege against disclosing the names of the putative fathers of their children in open court ?

3. Where a statute is justified by its proponents as being designed to protect the interests of children born out of wedlock, and said statute requires disclosure and establishment of paternity even where such disclosure may not be in the interests of such children, did the District Court err in deciding that the statute does not create a constitutionally impermissible presumption ?

4. Where a state statute operates only against mothers, and only against the mothers of illegitimate children, does the statute violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution ?

STATEMENT OF THE CASE.

This action to challenge Connecticut General Statutes (C.G.S.) §52-440b on constitutional grounds (and its applicability to welfare recipients on grounds of conflict with the Social Security Act) was brought by complaint dated January 31, 1973. At hearing February 26, 1973 on plaintiffs-appellants (hereinafter "appellants") motion to convene a three judge court, the District Court, per Newman, J. ordered it consolidated with a similar case, Doe et als. v. Norton (cited supra., p.2) in which a three judge court had already been convened. All subsequest proceedings in the District Court involved both actions. All plaintiffs have proceeded at all times under pseudonyms in order to protect the privacy they seek to establish in this action.

Under C.G.S. §52-440b, refusal by the mother of an illegitimate child to divulge the name of the putative father of her child to the appropriate authority triggers an original civil contempt procedure[1], which may result in up to one year imprisonment and a two hundred dollar fine[2]. Under it the mothers may be forced

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1. Although nothing in C.G.S. §52-440b designates it as "civil", it is the Attorney General's position that that is the case; appellants do not dispute that interpretation; see Stipulations of record, ¶2.

2. While the requirements of §52-440b to divulge the fathers name and to bring and prosecute paternity actions appear to apply to all mothers of illegitimate children, only in three sub-categories is there any enforcement provision. These are a)State Welfare recipients, b)town welfare recipients, and c) instances in which some competent court has appointed a guardian or guardian ad litem who is not the mother. The District Court construed the statute to apply to all mothers.

1) to appear in court, 2) to testify as to the name and other identifying information about the putative father, 3) to "institute" a paternity action, and 4) to "prosecute" a paternity action. The Welfare Department has the power to bring a paternity action in the name of the Commissioner under C.G.S. §52-440a, and the mother can be forced to testify at the trial of any paternity action, C.G.S. §52-435b and 440a.

Appellants are the classes of mothers and children subject to the statute. This action was originally brought by two mothers on behalf of themselves, their children and the classes represented by each (Complaint, para.4., Substituted Complaint, para. 4).

2. cont.

Although appellants believe the statute is at least administered to discriminate against them as welfare recipients, neither the pleadings nor the evidence is directed toward this discrimination in administration, and it is not therefore an issue in this appeal.

For a number of years prior to 1969 the Connecticut State Welfare Department pursued a policy of requiring any recipient who was the mother and supervising relative of an illegitimate child to divulge the name of the child's putative father as a condition of the child's eligibility for Aid to Families with Dependent Children (AFDC). This practice was enjoined as violative of the Social Security Act, Doe v. Shapiro 302 F. Supp. 761, (D. Conn., 1969), appeal dismissed 396 U.S. 488, reh. den'd 397 U.S. 970 (1970). The Department thereafter attempted to require such divulgence as a condition of the mother's eligibility for AFDC benefits as a supervising relative. This practice also was enjoined, Doe v. Harder 310 F. Supp. 302 (1970), appeal dismissed 399 U.S. 902 (1970). This court reached the same conclusions in summarily affirming substantially identical decisions from three other Districts, Meyers v. Juras 404 U.S. 803, reh. den'd 404 U.S. 961 (1971), Carleson v. Taylor 404 U.S. 980 (1972), Weaver v. Doe 404 U.S. 987 (1971). Now Connecticut is at it again. After the second Doe decision, the Department supported H.B. 6040, now C.G.S. §52-440b, which again seeks to compel mothers of illegitimate children and prosecute paternity actions. The enforcement mechanism, however, is different.

The District Court, believing that there might be a conflict of interest between the mothers and their children, appointed separate counsel to represent any separate interests the children might have. Counsel for the children deposed Dr. Albert Solnit, director of the Yale Child Study Center and co-author of the recent book Beyond the Best Interests of the Child (with Anna Freud and Joseph Goldstein) (Free Press, 1973), and took an affidavit from Dr. Edward Zigler, former head of the Office of Child Development at the Department of Health, Education and Welfare. Both experts took the position that the interests of the illegitimate children were not advanced and might well be harmed by C.G.S. §52-440b. Dr. Solnit took the position that the child's interests were so greatly bound up with those of its mother that there could be no conflict of interest between them and any compulsion against the mother would prove psychologically harmful to the child. Dr. Zigler stated that in his opinion disclosure of the name and identity of the actual father to the child could be harmful because it would destroy an idealized and useful image the child would otherwise have about his/her father. On the basis of these opinions, the attorneys for the children joined appellants in urging the District Court to enjoin the operation of the statute.

Hearing on the merits was held April 30, 1973 before Timbers, Circuit Judge, and Blumenfeld and Newman, District Judges.

Appellant mothers presented evidence in fifteen affidavits (which were admitted by agreement). Fourteen of these were from members of the plaintiff class of mothers. The fifteenth, that of Katherine Lopes (Affidavit XV as filed), described in detail her experiences, particularly her feelings while being forced to prosecute a contested paternity case, testifying and being cross-examined. In her affidavit, named plaintiff Dorothy Poe did not want to prosecute a paternity action because of substantial fears that the pressures of testifying in court might cause her to undergo a nervous breakdown, and because she had never been able to realize any benefit from going ahead in the case of her older child (Affidavit of Dorothy Poe, paras. 7 and 8). In her affidavit Sharon Roe stated that she knew there was little likelihood that her child's father would ever contribute to her support and a good chance that he would break off his developing relationship with the child if she tried to force him to contribute to her support; she also felt very strongly that the Commissioner should not be in the position of telling her how to protect her family's financial interests; Ms Roe had only been a recipient of AFDC benefits a short time and expected to terminate them before long. (Affidavit of Sharon Roe, passim.).

In the cases of several other mothers who submitted pseudonymou affidavits, there was substantial reason to think that prosecuting a paternity action or divulging the putative father's name would not advance the family's financial interests, either because the

statute of limitations had already run (see C.G.S. §52-435a, Affidavits III and XIV), because the mother already had in her possession signed acknowledgments of paternity which could form the basis of a later support order under C.G.S. §52-442a (see Affidavits IV, V, and X), or because the mother was not herself certain of the father's identity (see Affidavits IX and XII). In all of the other cases there was an informed decision that the chances of detriment to mother and/or child were greater than the chances of gain.

Appellants argued, based on these facts, that §52-440b violated their constitutional right of privacy by depriving them of control of their families' destinies and probing into their past sexual conduct, that it contained a constitutionally impermissible presumption of unfitness on their part to make financial decisions for their families, that it violated their rights to equal protection of the laws and that it contravened the Social Security Act.

The Defendant offered no legislative history or evidence in support of his contention that the statute was intended to and did protect the interests of the illegitimate children. He relied instead solely on his claim of law that the interests advanced by appellants enjoyed no constitutional protection.

On September 5, 1973 the Court, per Blumenfeld, J., filed its Memorandum of Decision, Findings of Fact and Conclusions of Law denying plaintiffs-appellants applications for declaratory and injunctive relief and dismissing the case. Judge Newman filed a concurring opinion. On September 7, 1973 the Court entered judgment accordingly. This appeal followed.

THE QUESTIONS ARE SUBSTANTIAL

The issues of liberty from state compulsion in controlling their families' financial course, and of protecting their sexual activities from public disclosure are of obvious importance to all families containing an illegitimate child. In 1971 there were 4,533 births in which no name was listed as father on the birth certificate in Connecticut (Brief of Appellee below p. 8). These constituted 9.9% of the total births. The issues in this appeal may well have application in other states as well; as of 1973 New Jersey (N.J.S.A. §9:17-2) Georgia (Code of Geergia, §74-301) and Arkansas (Arkansas Statutes §34-713) had similar statutes. The attorney for the appellants has been informed that other states are considering such legislation. Unquestionably the issues affect a very substantial number of people.

A. THE DECISION BELOW PERMITS INVASION OF APPELLANTS CONSTITUTIONALLY GUARANTEED LIBERTY.

The right of parents to determine the care of their children has long been recognized as constitutionally protected liberty: Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters 268 U.S. 510 (1925); Prince v. Massachusetts, 321 U.S. 158 (1944); and Wisconsin v. Yoder 406 U.S. 205 (1972). The integrity of the family unit has likewise, been protected, Griswold v. Connecticut, 381 U.S. 479 (1965); Stanley v. Illinois 405 U.S. 645(1972), as has the right to determine, without state interference, such matters as sex, child-bearing and marriage; see e.g. Skinner v. Oklahoma 316 U.S. 535, Loving v. Virginia, 388 U.S. 1, Eisenstadt v. Baird, 405 U.S. 438, and Roe v. Wade, 35 LEd 2d 147 (1973). A right which is within the constitutionally protected "zone of privacy" can be infringed only where there is a compelling state interest, Roe v. Wade, supra, at 178, and then only by statute "narrowly drawn to express only the legitimate state interests at stake" Roe v. Wade, Ibid., Eisenstadt v. Baird, supra at 460, 463-464 (White J., concurring). The burden of proving that such compelling interest exists is on the state, Roe v. Wade, supra, at 179.

The zone of privacy may protect a relationship such as the doctor-patient relationship Roe v. Wade, supra. Doe v. Bolton 35 LEd 2d 201 (1973), or the marital relationship, Griswold v. Connecticut, supra. Or it may protect an individual, Eisenstadt v. Baird, supra. Where the privacy of a family is concerned, what

is protected is the parent's right to decide questions affecting the family; see Pierce v. Society of Sisters, supra., Stanley v. Illinois, supra., at least until the children are old enough to formulate their own views on the subject; see Wisconsin v. Yoder 406 U.S. 205, 229 et. seq., and Matter of Seiferth 309 N.Y. 80. All of the children involved in this action are well below the age at which their opinions can be formulated and represented separately from those of their parents.

As to this type of privacy at least, there is no conflict of interest between mothers and children. Any financial gain to the child is also financial gain to the mother since it relieves her, to that extent, of her duty to support the child. Psychologically, there is also no conflict, see Deposition of Dr. Albert Solnit, passim

If the question is whether the child should for his/her own good be informed who his/her father is, that is a decision to be made in private between the mother and her counsellor. See Roe v. Wade, supra.

Even where subject to countervailing interest, these parental rights may not be invaded by state power except in accordance with due process, Stanley v. Illinois, supra. (See part IIC infra., which argues §52-440b violates due process).

The named plaintiffs have been faced with a difficult choice: whether to pursue the vague possibility of receiving support and other benefits from the putative fathers of their children through the channel of a paternity action with its attendant possible public humiliation and harassment and with the possibility that the father would flee the jurisdiction thus ending any relationship

either she or the child now has with him, or to forego that vague possibility of financial benefit for any of a variety of other reasons.[1] While many, probably most, women in their predicament voluntarily choose the former, plaintiff mothers and the class they represent chose the latter. Plaintiffs took this course for a variety of rational reasons which did not ignore the interests of their children;

There are a number of decisions in somewhat similar cases intimating that family decisions such as those involved in this case should be considered within the constitutional zone of privacy. Thus Judge Murray (D Mass), in enjoining a municipal justice from forcing welfare mothers to sign nonsupport warrants and then trying the cases of criminal nonsupport, stated:

> It may be that conduct by the defendant which resulted in women unwillingly swearing out non-support complaints against their husbands and being further involved in the subsequent prosecution might be found to violate other rights, for example the right of privacy, protected by the Constitution through the first amendment (citations omitted). But these rights were not asserted by the plaintiffs and the court does not undertake to decide them Haley v. Troy 338 F. Supp. 794 at 804. (D Mass, 1972)

And in striking down an Oregon regulation requiring, as a condition of AFDC eligibility that the mother sign a complaint, Judge Goodwin (writing for a unanimous three-judge panel) stated:

> The State Public Welfare Division was directed by Congress to secure the mother's cooperation in developing potential income resources, but it was not authorized to terminate an AFDC grant (which is for children) to coerce the cooperation of a mother... Neither do we hold that the State of Oregon may not seek the AFDC mother's cooperation

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[1] See Affidavit XIV (Katharine Lopes) for an example of the vagaries of the process C.G.S. §52-440b initiates.

> through means less drastic than the withdrawal of benefits from her children. Meyers v. Juras 327 F. Supp, 759, 762 (1971) affirmed 404 U.S. 803 (1972).

Clearly, §52-440b is substantially more drastic than the procedure found unacceptable in Juras.

There are, of course, limitations to the extent of the constitutional zone of privacy. Limits may be imposed either by opposing constitutional rights or by "compelling interests". It is submitted that neither is present here. The defendant did not plead or prove any compelling interests, although it was his burden to do so, Roe 35 LEd 147, 179.

There is no constitutional right in opposition to the right asserted by plaintiff mothers. The children have a statutory right to support from their parents, Connecticut General Statutes, §17-320. In addition, if the state has support laws as Connecticut does, it may not discriminate against illegitimate children, Gomez v. Perez 409 U.S. 535 (1973). But there has not, heretofore, been a constitutional right to receive support.[3]

The financial interests which are claimed to oppose the mother's privacy right, whether they are conceived of as derivative of the child's interests in seeking support or the state's interest in seeking reimbursement for Welfare monies spent, are

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[3] Nothing in Gomez supports the claim that the child's interest is always greater than the parent's right to determine the family destiny or the parent's right to privacy. Gomez was in no way concerned with such a situation. See Linda R.S. v. Richard D. 35 L.Ed.2d 536 (1973).

not compelling interests justifying overriding the parental privacy right, Shapiro v. Thompson 374 U.S. 618 (1969). See also May v. Anderson 345 U.S. 528 (1955).[4]

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[4] Cases imposing on parents the duty of cooperating with other types of public policies are not controlling here. In Jacobson v. Massachusetts 197 U.S. 11, the Supreme Court upheld a state law making compulsory vaccinations. The rationale for decision was that there was a particular public interest in preventing the spread of disease which justified overriding any private interests to the contrary. In the language of later cases, the public health constitutes a compelling state interest.

In Prince v. Massachusetts 321 U.S. 158, the Supreme Court upheld a criminal conviction of a parent for violation of the child labor laws over a claim that the First Amendment's free exercise of religion clause prevented the state from so criminalizing religious activity, in that case the selling of religious tracts. In so ruling, the court relied upon the validity of the child labor laws which found a public purpose sufficient to override any contrary private interests, see, e.g. Sturges v. Beauchamp 231 U.S. 320 (1913). Prince has been limited by later interpretation, Sherbert v. Verner 374 U.S. at 402-3, Wisconsin v. Yoder 406 U.S. at 230, and it is now appears that the decision in Prince would not be upheld in light of the "compelling state interest" test now applicable to cases involving the constitutional right of privacy. See Roe v. Wade, supra,, at 4225-6. Prince, in any case was concerned with the validity of a regulation upon the activities of minors though enforced against their guardians in circumstances where the same activities could not be prevented if carried on by an adult. It is hardly determinative of this case in which there is no evidence that that the Statute promotes, and substantial evidence that it is harmful to the interests it theoretically promotes.

Nor is the power of the state to compel school attendance compelling here, see, e.g. State v. Bailey 157 Ind. 324, Pierce v. Society of Sisters 268 U.S. 510, [illegible], and Wisconsin v. Yoder supra. These cases rely upon the public and private benefits which compulsory education supposedly confers, and therefore meet the compelling state interest test. In the present instance, the defendant has not suggested any public benefit from the enforcement of C.G.S. §52-440b; the only ultimate gain which could be forthcoming from its enforcement would be private and financial, and accrues as

B. THE DECISION BELOW, BY FAILING TO FIND THAT THE CONSTITUTIONAL RIGHT OF PRIVACY INCLUDES A PRIVILEGE AGAINST TESTIFYING, UNDERMINED THE RIGHT.

The areas of sexual conduct, and procreation are unquestionably protected by the "zone of privacy" emanating from several of the specifically enumerated constitutional liberties, Griswold v. Connecticut (supra) Skinner v. Oklahoma (supra) Loving v. Virginia (supra) Eisenstadt v. Baird (supra) Roe v. Wade (supra),

The decision below seriously undermines the holding of N.A.A.C.P. v. Alabama 357 U.S. 449 (1958) incorporating a privilege against disclosure under circumstances where dampering of First Amendment liberties would be likely to result. In so doing, the District Court sought to distinguish the line of cases commencing with Griswold on the basis that none of them involved, at the constitutional level, a privilege against testimony. Other lower courts, however, have found that the right of privacy contains a concomitant right against disclosure. See, e.g. Schulman v. New York City Health and Hospital Corp. 70 Misc 2d 1093, 335 NYS2d 343, (1972) rev'd and remanded (in light of Roe v. Wade) 41 AD2d 714, 341 NYS2d 242 (1973), Judgment on remand 346 NYS2d 920 (1973)

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4 (cont)

much to the mothers as to the babies.

Nor do cases permitting the state to remove children from their parents custody temporarily to affect vital medical procedures support defendant's position. See e.g. People ex. rel. Wallace v. Labrenz 411 Ill. 618, cert. den'd 344 U.S. 824 and Jehovah's Witnesses v. King County Hospital 278 F. Supp. 488 D. Wash., (1967). They impose no penalty on the parents and permit such removal only after individual due process hearing as to its propriety. See e.g. Stanley v. Illinois, supra.

(appeal pending) which struck down a New York City Health Department regulation requiring the filing of a fetal death certificate following an abortion. See also Roe v. Ingraham 480 F2d 102, (2nd Cir., 1973, Friendly Chj) convening a three-judge court to determine inter alia, whether a requirement that certain Doctor's prescriptions be registered with the State Department of Health violated the constitutional right of privacy.

There is thus a substantial question whether the Court below erred in refusing to find that a privilege against disclosure is contained in the constitutional right of privacy.

C. THE STATUTE TAKES APPELLANTS LIBERTY WITHOUT DUE PROCESS OF LAW.

As noted above, C.G.S. §52-440b removes from the appellant mothers the right to decide for themselves whether or not to seek support for their children from the children's fathers. The statute is premised on the assumption that any refusal or failure of the mother to seek such support is contrary to the child's interests; it therefore singles out those mothers who refuse to pursue court action to establish paternity and penalizes them severely. Yet, as the uncontraverted evidence presented by appellants and by the attorneys for the children proved, the assumption is erroneous and illogical in many cases. But §52-440b does not permit,[5] much less require any prior proceeding to

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5 The statute is permissive rather than mandatory as to penalty, for this reason the District Court found that the presumption was not irrebuttable. But neither the majority of the District Court nor the Statute provided any guidelines for the supposed discretion of the Connecticut Circuit Court judges, and Judge Newman's concurrence gives only the barest of outlines. The Court also overlooked the Stipulation as to policy filed by the defendant, which indicated that it was his policy to pursue all non-cooperating mothers within his powers under the Statute, Stipulation ¶1

determine where the childs best interests lie.

Arbitary and irrebuttable presumptions in the area of child custody and support violate due process, Stanley v. Illinois 405 U.S. 645, (1972). See also Vlandis v. Klein 37 LEd2d 63 (1973).

While the state may sometimes, in the compelling individual interest of the child, justify invasion of the zones of privacy outlined above, the question of whether it may do so in the wholesale manner contemplated by §52-440b is clearly substantial so as to warrant plenary review.

D. THE DECISION BELOW DENIES APPELLANTS EQUAL PROTECTION OF THE LAWS.

C.G.S. §52-440b operates only against mothers and only mothers of illegitimate children. It forces this class of persons to seek support from the other parent for a child on penalty of up to a year in jail and a $200.00 fine. There is no Connecticut Statute requiring any such action of any other class of parents, though the child's interest in seeking support the same is irrespective of whether he or she is illegitimate or legitimate or of whether he or she resides with a mother or father. No evidence was adduced by defendant which would support these categories.

In applying against women only and against families having an illegitimate child only, the Statute relies on two suspect categories: sex and illegitimacy. See e.g. Stanley v. Illinois 405 U.S. 645 (1971) and Gomez v. Perez 409 U.S. 535 (1973). Thus, whether or not the court is persuaded that plaintiffs-appellants claim of a constitutional privacy right against the operation of the Statute, there are substantial questions presented as to which equal protection standard should have been applied and whether the Statute measures up to the applicable standard, see e.g. Weber v. Aetna Casualty and Surety Co. 406 U.S. 164 (1972), Gomez v. Perez (supra.) and San Antonio Independent School District v. Rodriguez 36 LEd2d 16 (1973).

CONCLUSION

Appellants respectfully submit that the Supreme Court has jurisdiction over this appeal under 28 U.S.C. §1253 and that the questions presented , involving as they do whether a State statute violates constitutional rights of parents to bring up their children and of privacy and whether the same statute denies these mothers due process and the equal protection of the laws, are substantial. Appellants therefore respectfully urge this Court to reverse summarily the United States Three Judge District Court for the District of Connecticut or to set the case down for plenary consideration.

RESPECTFULLY SUBMITTED

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